

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMON CARLINE, :
Plaintiff, :
: 23 Civ. 251 (LGS)
-against- :
: ORDER
PEPSICO, INC. et al., :
Defendants. :
: X

LORNA G. SCHOFIELD, District Judge:

WHEREAS, the Order dated April 18, 2023, set a briefing schedule for Defendants' motion for summary judgment;

WHEREAS, Plaintiff was to file his opposition to the motion for summary judgment by June 1, 2023;

WHEREAS, Plaintiff has not filed any opposition. It is hereby
ORDERED that Plaintiff shall file its opposition, not to exceed 25 pages, by **June 9, 2023**. If Plaintiff fails to file its opposition, the motion will be treated as unopposed. A district court "must consider the merits of [an unopposed] motion" and "unopposed motions for summary judgment must fail where the undisputed facts fail to show that the moving party is entitled to judgment as a matter of law." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006); *accord Wimbledon Fin. Master Fund Ltd. v. Bienert Miller & Katzman, PLC*, 619 F. Supp. 3d 351, 376 n.7 (S.D.N.Y. 2022).

The movant still bears the burden of showing that no genuine factual dispute exists. *Vermont Teddy Bear Co. v. I-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004); *accord Sec. & Exch. Comm'n v. Simeo*, No. 19 Civ. 8621, 2021 WL 4041562, at *6 (S.D.N.Y. Sept. 3, 2021). It is further

ORDERED that, if Plaintiff files an opposition, Defendants shall file their reply, not to exceed 10 pages by **June 20, 2023**.

Dated: June 5, 2023
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE